

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: December 6, 2006

Time: 8:30am

Place: Room 5112, State Office Bldg

Members

Commission Members

(Attendees = x)

xChairperson, Darwin L. Johnson, *Wasatch* xJoyce W. Clark, *Washington*
David M. Lattin, *Salt Lake*

xGlen W. Roberts, *Utah* xR. Curt Webb, *Cache*

Department Staff

John E. "Mickey" Braun, Jr. xPerri Babalis xDarrel Powell xMark Kleinfield
Ass't Commissioner *AG Legal Counsel* *Dir. Market Conduct* *Admin. Law Judge*

xGerri Jones xSheila Curtis xJilene Whitby
MC Examiner *MC Examiner* *PIO/Recorder*

MINUTES

I. Welcome and Introductions by Darwin L. Johnson, Chair

Darwin began the meeting at 8:35 a.m.

II. Adoption of Minutes of Previous Meeting

Joyce made the **motion** to approve the minutes without change, Curt seconded it and the vote was unanimous.

III. Review & Concur with Licensee Report

Commission members asked who had taken Utah Title's name? Sheila checked the application and found it was Brett Cragun. Joyce made the **motion** to approve the licensee report, Glen seconded it and the vote was unanimous.

IV. Number of Cases Open & Closed / Sheila

Sheila distributed a list of cases they were working on, minus the names. She noted that high priority cases are those involving the most victims, causing the greatest loss.

- Darwin: People are tired of rules being violated without punishment.
- Gerri said the department was revising the penalty matrix and trying to bring them up to the maximums allowed by law. The maximum penalty per violation for individuals is \$2,500 and \$5,000 for agencies.
- Joyce: Expressed concern that a person could fail the marketing portion of the test, pass the title portion, and then receive a title and marketing license. **This subject should be put on June's agenda.**
- It was noted that ULTA's calendar contained a number of errors.
- Glen referred to a specific case and asked why the lien issue was a violation? Gerri said it was probably actually a fiduciary violation.
- Sheila said some of the complaints may not have been looked at yet but a file had been opened on each one. Gerri said she was working on 86 cases. Many of the cases are resolved over the phone. All cases prior to those noted on the report have been resolved. The report included 123 cases. **Curt asked that the next report include a summary at the end of the total number of cases opened and closed during the month. Darrel agreed.**
- Darwin asked who Terri was. Darrel said she was an investigator and recently has spent most of her time out of the office investigating title cases.

- Glen asked if it would be helpful if the Commission helped prioritize the cases? Darrel suggested it would not since other agencies are involved in a number of them and the investigators have a broader knowledge of the issues involved in each case.
- Gerri noted that when a case is given an "e-case" number the file then goes to Gale for enforcement. When a case involves administrative action against an individual and an agency, each will be given an e-case number. Each will refer to the other case number.
- Glen asked about the status of case 53868. Gerri noted that it was new.

V. Review & Concur with Enforcement Case Report

- There were no enforcement cases to report to the Commission.
- Sheila reported that Atlas accepted the increased fine imposed by the Commission. It has been given to Gale to process. **The Commission and Commissioner need to sign off on it.**

VI. Old Business

- **Escrow instructions**
 - Darwin contacted a number of people but was unable to get copies of their instructions.
 - Glen said Paul Newton told him this had not been discussed in the past two ULTA executive meetings. Paul seems to be happy with Bruce Mack's draft of instructions.
 - Curt made a **motion** that Commission members study Bruce Mack's draft and bring suggested changes to the next meeting. Joyce said Gerri had asked that the instructions include instructions for mortgage lenders. Curt hoped to keep the instructions short. They cannot violate lender instructions. **He asked that this be on the next agenda.** Joyce seconded Curt's motion and the vote was unanimous. Darwin said one of problems was getting it signed and returned. It would be nice if that could be required.
- **Status of R592-2**

No comments about this rule were received by the Commission or the department. Glen **moved** to put it into effect. Curt seconded it and the vote was unanimous. **Jilene will put it into effect today or tomorrow.**

VII. New Business

- **Discuss Flip Bulletin** / Darrel
 - Darrel read through the bulletin.
 - Curt asked what effect this would have on multiple transactions? Gerri said that each transaction stands on its own. One must be closed and recorded, then the next should be closed and recorded, and so on.
 - Curt said the statute justified the bulletin.
 - Gerri suggested adding a paragraph at the end to define a legal transfer. Glen suggested including her diagram in the bulletin. All agreed.
 - Curt was concerned that money had to be in the account to close a deal. Gerri said the bank determines if funds have been cleared. Curt said the funds are collected and cleared in both instances. The bulletin only applies to addendums as written.
 - Darwin said Fannie Mae would not loan money on a property resold within 90 days.
 - Perri said the words, "public risk," in the first paragraph was a bold statement. Are we sure we want to say that? She suggested adding the addendum to the bulletin and including on it a publication date so if it is corrected the bulletin would not apply to it.
 - Glen suggested the title of the bulletin be, "Flip Transactions." The Commission's findings are that to comply with statute one must have segregated funds in each account. He was not comfortable with the "public risk" wording.
 - Glen was given the task of making changes to the bulletin as suggested then sending it to Gerri. Curt suggested he define a flip. Gerri will send him her slide defining a flip.
 - Curt: A developer will sell to a builder and the builder will never close. That type of transaction will be eliminated by this bulletin. Glen did not think this was an issue. Most transactions were done in a way that would be allowed by the bulletin and law.
 - Glen will send the revised bulletin to everyone when he is finished.

- Sheila asked if there was an industry wide definition of flip? Gerri said HUD's defined it as a property that was turned over within 90 days of purchase. This is too strict.
 - Darrel: Properties are moving so fast in China that the government has put a heavy tax on transactions where a property is turned over within five-year of purchase. Gerri said flips also inflate home prices.
 - Gerri suggested specifying residential property in the bulletin.
 - **Put this on next month's agenda.**
 - **List of Priorities:** Perri noted that “controlled business” is the next topic on the Commission's list of priorities. Don't put this on the agenda yet.
 - **Standardized "Subject To" Clause / Darwin**
 - Glen said there was case law defining what "Subject to" means. Since it is a contractual term it need not be addressed here. Joyce said it involved tax consequences the Commission should not get involved with.
 - Gerri brought up the issue of a licensee who wanted to have both an active title and real estate license. He wants to do searches on commercial property. She will talk to Gale about it. The department has not allowed this in the past.
 - **Proposed Title & Escrow Commission Legislation / Perri**

Perri presented proposed legislation to the Commission. Perri asked the Commission their preference in the case of a stipulation and order. Do they want the administrative law judge to impose the penalty and the Commission concur or should the Commission impose the penalty and the administrative law judge concur?

 - Glen asked what the difference would be? Perri said the difference would be that the commission would concur with the penalty rather than imposing penalty. ~~that when the Commission decides the penalty is creates an additional step and when they just concur then they give away some of their power and duties.~~ She said that wording could be added to the stipulation and order so that it would not be binding on the defendant if both the Commissioner and Commission do not agree ~~concur~~ on the penalty.
 - Curt made a **motion** to leave the language in the statute as currently written ~~approve the wording change~~ and Glen seconded it. The vote was unanimous.
- VIII. **Other Business**
- Darrel said they would update the Commission on the matrix at the next meeting.
 - Sheila said the recently posted escrow charge filings on the web at <http://www.insurance.utah.gov/2006%20Escrow%20Filings.xls> and encouraged Commission members to spread the word.
 - Perri referred to a recent Forbes magazine article about the title business. Gerri had sent the article and ALTA's response to it to Commission members.
- IX. **Reminder:** Next Liaison Meeting is January 8, 2007 and is probably going to be held at Backman Title. Three Commission members will attend.
- X. **Adjourned:** Curt **moved** to adjourn at 10:24 am. Joyce seconded the motion.
- XI. **Next Meeting:** It was decided to move the next meeting to Monday, January 8, 2007, 8:30 a.m., Room 5112

Next Meetings

8:30 a.m.

January 8, 2007 - Rm5112	July 11, 2007
February 14, 2007	August 8, 2007
March 14, 2007	September 12, 2007
April 11, 2007	October 10, 2007
May 9, 2007	November 14, 2007
June 13, 2007	December 12, 2007